

SPECIAL

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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SEPTEMBER 18, 1989

LEGISLATIVE REFERRAL MEMORANDUM

OCA 3251-89

TO:

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SUBJECT: State Q's and A's on chemical and biological weapons based on Undersecretary Bartholomew's June 22 testimony.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than Monday, September 25, 1989.

Questions should be referred to SUE THAU/ANNETTE ROONEY (395-7300), the legislative analyst in this office.

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosure

cc: J. Ashford
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SPECIAL

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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, D.C.

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July 5, 1989

Honorable Reginald Bartholomew
Department of State
Under Secretary for Security Assistance, Science, and Technology
Room 7427
2201 C St., NW
Washington, D.C. 20520

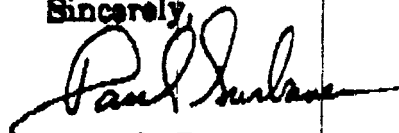
Dear Mr. Bartholomew:

Thank you for testifying before the Subcommittee on International Finance and Monetary Policy on June 22, 1989, on the issue of chemical and biological weapons.

In order to complete the hearing record, the Subcommittee would appreciate your answers to the enclosed questions as soon as possible.

Again, I thank you for appearing before the Subcommittee. If you have any questions, please contact Martin Gruenberg at 224-1564.

Sincerely,



Paul S. Barbanes
Chairman

Subcommittee on International Finance
and Monetary Policy

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United States Department of State

Washington, D.C. 20520

Q.1. The Administration's stated position is to support multilateral approaches to Chemical Weapons control but to endorse unilateral sanctions authority. How can these two positions be reconciled? What is the likelihood that the State Department would recommend imposition of unilateral sanctions, for example against Imhausen?

Sanctions authority, properly framed, would reinforce rather than conflict with our multilateral approach to chemical and biological weapons (CBW) control. The Administration believes that such authority, if it provides for adequate Presidential flexibility, can be a deterrent against foreign companies knowingly aiding CBW proliferation and against foreign countries using CBW in violation of international law. There already exists a multilateral consensus with our allies against the spread of CBW and against its use. If there is adequate discretion in their imposition, the President could apply sanctions in those situations where their application would be consistent with this multilateral consensus.

We do recognize, however, that there may well be specific situations where the application of unilateral U.S. sanctions might undermine multilateral efforts. For example, if the triggering event for possible sanctions were any proliferation-related activities of a foreign company against which the foreign government in question had already taken appropriate action, U.S. sanctions might well be unnecessary and even counter-productive, undermining future cooperation with that government. It is precisely for reasons such as this that we have emphasized the need for Presidential flexibility. This flexibility is essential if the sanctions tool is to be applied in a manner that will most effectively contribute to the overall effort to stop CBW proliferation.

With respect to the likelihood that the State Department would recommend imposition of sanctions against Imhausen, I would first note that we believe that the decision to impose sanctions should be left to the President based on the best available evidence in a particular case. The Administration does oppose retroactive application of either foreign company or foreign country sanctions. We would thus not favor imposition of sanctions against Imhausen for actions that occurred prior to the passage of any sanctions legislation.

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Q.2. Sanctions must be threatening to be a deterrent. Is a broadly discretionary sanction, as proposed by the Administration, a real deterrent? Does the Administration oppose the sanctions in S. 8 which require imposition of sanctions only to those that knowingly assist Chemical Weapons development?

The existence of broad Presidential authority to take a series of measures against foreign companies and countries that engage in CBW proliferation or use would be a very real deterrent. Certainly, at a minimum, any company or country contemplating CBW-related activities would have to factor into its decision the possibility of sanctions. The fact that the authority to impose those sanctions was a broad one, and that the scope of such sanctions could not be determined by the company with certainty in advance would increase, not weaken, this deterrent effect.

As currently drafted, S.8 does not appear to be limited to those that "knowingly" assist Chemical Weapons development. It would appear to apply to any foreign company that has aided a designated country to acquire designated CBW-related goods or technology. There is neither any "knowledge" requirement, nor any requirement that the goods or technology were in fact used in CBW development. We have other objections to S.8 as currently drafted, including its retroactive application and the lack of adequate Presidential flexibility.

Q.3. Current U.S. Chemical Weapons controls do not apply to dual-use chemical equipment and technology, only to 50 precursor chemicals. Yet the clear issue in the case of the Libyan plant was that Western companies had supplied not only controlled items but general support for construction of the plant -- steel-making and chemical producing capabilities. This was all legal activity, even under U.S. law, were it not in Libya. Does this not argue for expansion of U.S. and foreign export control regimes to cover a broader range of items for problem projects in problem countries?

The legality of the actions of the companies involved in the Libyan plant is currently under investigation by the appropriate authorities in the Federal Republic of Germany. Whether those activities would have been legal under U.S. law if they had not been connected with Libya is also not at all clear. That would depend both on the destination country, the nature of the goods and technology in question (there may well have been items whose export is controlled to other countries of CBW concern such as Iran or Syria), the accuracy and completeness of the shipping documentation, etc.

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We are, in any event, actively exploring the possibility of expanding CBW-related controls beyond precursors. As your next question implies, the problem faced in such an endeavor is devising and implementing controls that will be effective at stemming CBW proliferation but that will not unduly impede legitimate commerce. We and our Australia Group partners are giving this issue the highest priority.

Q.4. If chemical controls are expanded, how can they be constructed to stop assistance to Middle Eastern chemical plants while not interfering in general trade in chemicals?

First, I would note that concern over CBW proliferation is not limited to Middle Eastern chemical plants. Secondly, although any chemical controls will have some impact on general trade (as do all our export controls), the objective is to minimize the adverse impact to the greatest extent possible consistent with our CBW policy concerns. As I stated in the previous answer, we intend to work closely with other supplier countries to ensure that the most effective system of CBW export controls can be implemented on a multilateral basis.

Q.5. An approach to controls suggested by actions now being taken in Germany is closer collaboration with industry to identify problems in advance and warn companies off those projects. Any assistance to identified projects, or those the company knows are producing chemical weapons would be a punishable offense. What is the likelihood that Western governments would name "outlaw" governments or release intelligence information necessary to make such a system work? Could a targeted control regime be constructed banning any assistance to problem projects?

Publicly naming "outlaw" governments or disclosing sensitive intelligence information need not be required for government/industry cooperation to work effectively. We already share information with supplier governments through the Australian Group, including information on projects of concern.

I would note in this context that it is our understanding that the FRG legislation does not provide either for a public list of "outlaw" countries or projects. Rather it requires prior authorization for export of certain chemical installations and parts of installations (the precise definition of which will be determined through government/industry consultation). This type of approach would possibly be acceptable to other Western governments.